

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FRANK DIMARCO, : Civil No. 3:20-CV-01335

Plaintiff, :

v. :

BOROUGH OF ST. CLAIR, *et al.*, :

Defendants. :

Judge Jennifer P. Wilson

**ORDER**

**AND NOW**, on this 6th day of January, 2021, for the reasons stated in the accompanying memorandum, **IT IS ORDERED THAT**:

1. Defendants' motion to dismiss (Doc. 9) is **GRANTED IN PART AND DENIED IN PART**.
2. Plaintiff's retaliation claim is **DISMISSED WITHOUT PREJUDICE** to the extent that it is based on the August 3, 2019 incident in which Plaintiff damaged his vehicle, and to the extent that it is raised against Defendant Tomko based on Plaintiff's May 20, 2019 Facebook post. Dismissal of the retaliation claim is otherwise denied.
3. Plaintiff's municipal liability claim is **DISMISSED WITHOUT PREJUDICE**.
4. Count II of Plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE** with respect to Defendants Tomko and Dempsey.

5. Count III of Plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE**.
6. The complaint is **DISMISSED WITHOUT PREJUDICE** to the extent that it raises a supervisory liability claim against Defendants Tomko and Dempsey.
7. Plaintiff's claim for injunctive relief is **DISMISSED WITHOUT PREJUDICE**.
8. Plaintiff's request for punitive damages against Defendant Borough of St. Clair and against Defendants Tomko and Dempsey in their official capacities is **DISMISSED WITH PREJUDICE**.
9. Plaintiff may file an amended complaint in accordance with this order and the accompanying memorandum on or before **January 27, 2021**.
10. If Plaintiff declines to file an amended complaint by the above date, Defendants are directed to respond to the original complaint in accordance with the Federal Rules of Civil Procedure.

s/Jennifer P. Wilson  
JENNIFER P. WILSON  
United States District Court Judge  
Middle District of Pennsylvania